

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, January 3, 2013
REGULAR MEETING
6:30 p.m.

I. **CALL TO ORDER** – The meeting was called to order at 6:34 p.m.

II. **PLEDGE OF ALLEGIANCE** – Commissioner Toerge

III. **ROLL CALL**

PRESENT: Ameri, Brown, Myers and Toerge

ABSENT (Excused): Hillgren, Kramer and Tucker

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Gregg Ramirez, Senior Planner; Patrick Alford, Planning Manager; Jaime Murillo, Associate Planner; Makana Nova, Assistant Planner; Ruby Garciamay, Community Development Department Assistant

IV. **PUBLIC COMMENTS** - None

Chair Toerge invited those interested in addressing the Commission on items not on the agenda, to do so at this time.

Newport Beach resident, Jim Mosher commented that the audio recordings for the Planning Commission meetings should be accessible to the public through the city's website and that the audio recordings would be the most complete and accurate record available. Mr. Mosher expressed his concern of being unable to access the discussions from the December 20 Planning Commission meeting which included the Airport Land Use decision related to the Uptown Newport project.

There were no others wishing to address the Commission and Chair Toerge closed the Public Comments portion of the meeting.

V. **REQUEST FOR CONTINUANCES** - None

VI. **CONSENT ITEMS**

ITEM NO. 1 MINUTES OF DECEMBER 20, 2012

Recommended Action: Approve and file

Chair Toerge noted minor corrections to the minutes submitted in writing by Jim Mosher.

Interested parties were invited to address the Commission on this item. There was no response and public comments were closed.

Motion made by Commissioner Brown and seconded by Commissioner Myers and carried 4 – 0, to approve the minutes of the Planning Commission meeting of December 20, 2012, Regular meeting, as amended.

AYES: Ameri, Brown, Myers and Toerge
NOES: None
ABSTENTIONS: None
ABSENT (Excused): Hillgren, Kramer and Tucker

VII. PUBLIC HEARING ITEMS

ITEM NO. 2 Corporate Plaza PC Amendment (PA2012-145) Site Location: 2 and 3 Corporate Plaza

Brenda Wisneski, Deputy Community Development Director advised the Commission that the applicant withdrew this application after the public hearing was noticed. No action required by the Planning Commission.

ITEM NO. 3 Wardy Residence (PA2012-140) Site Location: 1111 Dolphin Terrace

Planning Manager Patrick Alford presented details of the project addressing the applicants request for approval of a Site Development Review to allow an increase in the boundaries of Development Area B for the purpose of constructing a pool and retaining walls in Development Area C. The application also includes a request for a Modification Permit to allow a retaining wall over 8 feet in height from finished grade. These improvements are proposed in conjunction with the construction of a new single family residence.

Chair Toerge questioned staff if illustrations of proposed landscaping that would soften the 30-foot-high wall adjacent to the pool were available.

Mr. Alford stated that the existing landscaping on the slope would screen most of the view of the wall as seen from below; also the wall would be perpendicular to Bayside Drive and not very visible from this angle.

Chair Toerge invited the applicant and those interested to address the Commission on this item.

Zachary Sham spoke in opposition, citing that the project has not been approved by the homeowners association and the height of the retaining walls should be lowered to 3 feet.

Commissioner Ameri questioned Mr. Sham if he saw a negative impact to the immediate neighbors or whole community by increasing the height of the wall.

Mr. Sham was concerned about the precedence the requested height was setting.

Dan Purcell stated that the impact to views from the water should be considered.

Jim Mosher spoke in opposition, citing that the project violated the intent of the Bluff Overlay.

Jessica Joiner spoke in opposition, stating that the property owner knew of the constraints of the property when he purchased it.

Amen Wardy, applicant, responded to the comments, stating that he purchased the property prior to the establishment of the Bluff Overlay.

Molly Brenner spoke in opposition, citing inconsistency with the CC&Rs, Bluff Overlay, and Coastal Act.

Andrew McIntyre spoke in opposition, stating that the Bluff Overlay development areas should be maintained.

Barbara Tapon spoke in opposition, citing inconsistency with the CC&Rs.

Chair Toerge questioned Mr. Wardy about the appearance of the retaining wall that is the subject of the Modification Permit, asking if there were any plans to soften its appearance with landscaping or other treatments.

Mr. Wardy responded that it would be very difficult to soften the appearance of the wall with landscaping because the swimming pool would be immediately adjacent.

Brief discussion followed regarding the location of the wall.

There being no others wishing to address the Commission, Chair Toerge closed the public hearing.

Commissioner Ameri inquired if it was normal procedure to present a project to the Commission without homeowners association or CC&R approval. He questioned the HOA's issue of inconsistency with the project and the height of existing walls over the 3 foot standard in the surrounding area as depicted on the aerial photo presented by staff. He also asked if staff has met with representatives from the homeowners association.

Mr. Alford reported that the City does not require homeowner association approval and does not enforce CC&Rs. He also stated that staff had not conducted a survey of the height of retaining walls on the adjacent properties.

Ms. Wisneski stated that she has met with the association's architect and neighbors to discuss their regulations. She added that she had observed retaining walls higher than 3 feet.

Chair Toerge felt that the project is consistent with City policies and is adhering to the prominent line of existing development, pointing out that this bluff is not subject to marine erosion and thought the project follows the spirit of the Zoning Code.

In response to an inquiry from Chair Toerge, Mr. Alford referenced conditions that required landscaping improvements to be consistent with the plans submitted and for the landscaping approved by the Community Development Director.

Motion made by Chair Toerge and seconded by Commissioner Brown and carried 4 – 0, to adopt a Resolution approving Site Development Review No. SD2012-005 and Modification Permit No. MD2012-017.

Commissioner Brown asked if the association has the ability to enforce their own rules.

Assistant City Attorney Mulvihill responded that typically CC&Rs give HOA's the right of enforcement for violation of their rules.

Commissioner Myers stated he will vote in favor of the applicant. A prominent line of development is established and saw no visual impact.

AYES: Ameri, Brown, Myers and Toerge
NOES: None
ABSTENTIONS: None
ABSENT (Excused): Hillgren, Kramer and Tucker

ITEM NO. 4 Plaza Corona del Mar (PA2010-061)
Site Location: 3900 and 3928 East Coast Highway

Associate Planner, Jaime Murillo, presented details of the applicant's request for approval of a horizontal mixed-use development with six detached dwelling units above a common subterranean parking structure, a 2,160-square-foot office addition above an existing 535-square-foot delicatessen (Gallo's Deli), and a 10-space shared surface parking lot. Mr. Murillo summarized the Planning Commission's recommendation from the prior meeting to possibly waive one residential guest parking space and require that the 10-space ground level parking lot be used exclusively for commercial parking during the day. He then identified the issues that would result from a waiver. Specifically, the ground level guest parking space is a required van accessible parking space under the Building Code for the residential development and it cannot be waived as designed. He presented three options to the parking issue: the provision of signage to enforce the use of the parking spaces within the ground level lot as currently designed and two alternatives which would require the redesign and provision of a van accessible guest space and elevator within the subterranean parking structure. Mr. Murillo identified staff's recommendation to approve the first option, requiring additional signage to enforce the use of one residential guest space and nine commercial spaces during regular business hours (8am to 6pm) within the ground level parking lot, with no user restrictions after 6pm. Mr. Murillo presented two colored renderings provided by the project applicant that demonstrate the architectural details of the project including wood cedar siding, smooth stucco finish, and a unifying paint color palate. Mr. Murillo discussed the concept of retaining the existing Gallo's Deli structure during the construction of the proposed office addition above and proposed upgrade to the exterior façade. The existing Gallo's structure would maintain its signature blue awning on the East Coast Highway frontage as a character defining feature of the tenant.

Chair Toerge asked staff if comments from Commissioner Kramer were received. Assistant Planner, Makana Nova, reported that the Community Development Director had received his comments concerning the project design and architecture and indicated that staff believed his concerns had been adequately addressed in the staff report and the architectural elevations and colored renderings provided by the project applicant.

Brief discussion followed regarding parking. Commissioner Myers questioned if 9 spaces for the commercial uses was adequate and for clarification regarding the parking requirements. He commented that the Gallo's currently has parking available and his concern that no parking would be required per the existing Specialty Food Permit.

In response to the comment from Commissioner Myers, Mr. Murillo addressed parking issues and the adequacy of 9 spaces for commercial. He also clarified that three additional on-street parking spaces would be provided in addition to the two existing on-street spaces.

Commissioner Myers also expressed concerns with site drainage and inquired if staff had considered site drainage in their review of the project.

Ms. Nova noted that a preliminary Water Quality Management Plan (WQMP) had been conducted and would be finalized during the plan check process. Mr. Murillo further stated that a WQMP provides information addressing retention of storm water to the maximum extent feasible and treatment of water prior to release.

Chair Toerge invited the applicant and those interested to address the Commission on this item.

Magdi Hanna, property owner and applicant, stated he wanted to preserve the existing Gallo's structure for the nostalgic value that it brings to the community. He indicated that he would like to maintain the essence of Gallo's and keep the delicatessen open during project construction.

Marcello Lische, project architect, further explained the site drainage indicating that permeable surfaces including project landscaping would improve site drainage. Additionally, hard surfaces would drain onto East Coast Highway. There is an existing storm drain on-site that would be relocated by the project. Additional water would flow on-site to the relocated storm drain, then underneath East Coast Highway to Buck Gully and the ocean beyond through the existing storm drain system.

Corona del Mar resident, Dan Purcell, commented on the portion of recently vacated alley, indicating his preference that the City would have collected a fee from the property owner in exchange for this property. He commented on the plain stucco walls of the proposed project and encouraged maintaining the view corridor down Buck Gully.

There being no others wishing to address the Commission, Chair Toerge closed the public hearing.

In response to an inquiry from Commissioner Brown, Mr. Murillo indicated that Code Enforcement could enforce parking. On-site signage would indicate the intended use of the ground level parking spaces and the property owner and commercial tenants would have the ability to tow offending vehicles. Code Enforcement is a complaint based program and has the ability to investigate the problem should issues be brought to the City.

Commissioner Brown commented positively with relevance to keeping Gallo's blue awning as a character defining feature. He commended the applicant's efforts to maintain the existing structure for nostalgic reasons rather than for monetary gain.

Chair Toerge agreed with Commissioner Brown and indicated that the parking issues have been addressed by staff in the report.

Chair Toerge questioned staff regarding Condition 19 and confusion with the word "Notwithstanding". He then suggested combining Conditions 17 and 19.

Mr. Murillo indicated that the provisions of the Zoning Code suggest overnight parking is prohibited. The intent of Condition 19 was to reinforce the parking use limitations of Condition 17 and further clarify that commercial overnight parking is prohibited while residential overnight parking would not be restricted for the project. The Commission agreed to maintain the current language of the conditions as drafted.

Commissioner Ameri questioned the small third floor windows fronting East Coast Highway and that the current design and plain stucco creates the look of a wall.

Mr. Lische stated there is room for improvement with the preliminary design. He indicated that the windows at the third floor are smaller because they open from the master bath at each unit.

Commissioner Myers commented that maintaining the exterior of the existing Gallo's structure would also result in the preservation of the interior of the tenant space.

Motion made by Chair Toerge and seconded by Commissioner Ameri and carried 4 – 0, to adopt a Resolution approving Conditional Use Permit No. UP2012-011, Modification Permit No. MD2012-011, Site Development Review No. SD2012-001, Tentative Tract Map No. NT2012-001, and Variance No. VA2012-002, subject to the findings and conditions in the staff report.

AYES: Ameri, Brown, Myers and Toerge
NOES: None
ABSTENTIONS: None
ABSENT (Excused): Hillgren, Kramer and Tucker

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION - None

ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT

Ms. Wisneski suggested starting the February 7 Planning Commission meeting at 5:00 p.m. rather than 6:30 p.m. to allow adequate time to address the Uptown Newport Project and other applications. She will contact the Commissioners to confirm the meeting time.

She also reported that the letter received from Mr. Mike Sullivan concerning the Village Inn will be addressed.

ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT

Chair Toerge asked staff to address Mr. Mosher's suggestion to make the Planning Commission audio minutes available on the City's website.

ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES - None

IX. ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 7:54 p.m.

The agenda for the Regular Meeting was posted on December 21, 2012, at 3:20 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Michael Toerge, Chairman

Fred Ameri, Secretary

ADDITIONAL
MATERIALS
RECEIVED

Comments on Draft Minutes of January 3, 2013 PC Meeting

The following suggested changes to Item 1 on the January 17, 2013, Newport Beach Planning Commission agenda are submitted by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Page 2:

First line under Item 3: "... addressing the ~~applicants~~ applicant's request ..."

Fifth paragraph from end: "Mr. Sham was concerned about the ~~precedence~~ precedent the requested height was setting."

Page 3:

Sixth paragraph from end: "... adhering to the ~~prominent~~ predominant line of existing development ..."

Final sentence: "A ~~prominent~~ predominant line of development is established and he saw no visual impact."

Page 4:

Fourth line from end of long paragraph: "... and a unifying paint color ~~palate~~ palette."

Fourth paragraph from end: "He commented that ~~the~~ Gallo's currently has parking available ..."

Final paragraph: "... a preliminary Water Quality Management Plan (WQMP) had been ~~conducted~~ prepared (?)..."

Page 5:

Seventh paragraph: "Commissioner Brown commented positively ~~with relevance~~ relative to keeping Gallo's blue awning ..."

Page 6:

Motion at top of page: I am not suggesting any change to the minutes, but I believe the audio recording might reveal the motion that was voted on actually included a reference to "Variance No. VA2012-007," since that was the wording of the recommended action on the agenda and in the staff report. I believe "Variance No. VA2012-002," per the resolution which I assume was signed, and the draft minutes, is correct. I might further comment that it remains unclear to me if a "variance" exists as a separate numbered document (or file of documents?) apart from the resolution, and if so what that document looks like or where it can be inspected. If it is separate, it would seem important that the Commissioners (and public) be able to review it to know for sure what is being approved.